

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SIDNEY JAMES CLAYTON, #224797,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:06-CV-367-ID
)	[WO]
)	
J. C. GILES, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

On April 24, 2006, Sidney James Clayton ["Clayton"], a state inmate, filed a 42 U.S.C. § 1983 action. In his complaint, Clayton made only the conclusory allegation that the defendants subjected him to "cruel and unusual punishment" in violation of the Eighth Amendment. *Plaintiff's Complaint* at 2. The complaint therefore failed to identify factual allegations material to the count lodged against the defendants.

In light of the foregoing, the court entered an order requiring that Clayton file an amendment to his complaint repleading his claim in a manner consistent with the requirements of the Federal Rules of Civil Procedure. *Order of April 27, 2006 - Court Doc. No. 4*. The court specifically cautioned Clayton that his failure to file a complaint in response "to this order will result in a recommendation that this case be dismissed." *Id.* at 2. Although Clayton submitted a response to this order, he failed to file an amendment in compliance with the directives of the order and the court therefore struck the response for such non-compliance. *Order of May 11, 2006 - Court Doc. No. 6*. The time allowed

Clayton for filing an amendment to his complaint in compliance with the orders entered herein expired on June 12, 2006. As of the present date, Clayton has failed to file the requisite amendment to his complaint. The court therefore concludes that this case should be dismissed.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be dismissed without prejudice for failure of the plaintiff to comply with the orders of this court and her failure to properly prosecute this action. It is further

ORDERED that on or before July 10, 2006 the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981,

en banc), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 30th day of June, 2006.

/s/ Vanzetta Penn McPherson
UNITED STATES MAGISTRATE JUDGE